

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 25035 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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GANGOTRI INORGANIC PVT LTD - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR SK PATEL for the Petitioner.

Mr. Siraj Gori, Assistant GOVERNMENT PLEADER for Respondent no.1.

MR PJ MALKAN for respondent no. 2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 10/03/2006

ORAL JUDGMENT

Rule. Learned Assistant Government Pleader Mr. Siraj Gori waives service of notice of Rule on behalf of respondent no.1. Learned Assistant Solicitor General of India Mr. Malkan waives service of notice of Rule on behalf of respondent no. 2. The present petition has been preferred against the communication dated 30.7.2002,

order dated 12.8.2004 and the notice dated 26th December, 2005 (Annexures "C", "D" and "E" respectively to the memo of the petition).

2. The learned Advocate for the petitioner mainly submitted that no notice has ever been issued by the respondent no.1 authority before passing the final order of payment of stamp duty of Rs. 8,10,000/- as referred to in the order dated 12.8.2004 (Annexure "D") impugned notice at Annexure "E" to the memo of the petition. Thus, no opportunity of being heard has been afforded to the petitioner for fixing the payment of stamp duty by the respondents. It is also submitted by the learned advocate for the petitioner that the audit report can be the basis of issuance of notice under Bombay Stamp Act, 1958, but the Mamlatdar, Talod cannot issue final order of payment of Rs. 8,10,000/- on the basis of the audit report. Under the provisions of Bombay Stamp Act, 1958, especially under section 32 of the Act of 1958, necessary notices have not been issued to the petitioner for the payment of the stamp duty for the registration of the document which is at annexure "A" to the memo of the petition. The said document is dated 25th May, 2000. After registration of the sale deed, no notice has ever been issued under the

Act of 1958, much less under section 32 of the Act of 1958 and therefore, the direction for payment of Rs. 8,10,000/- by the impugned letter dated 12.8.2004(Annexure "D") and dated 26th December, 2005, by the Mamlatdar, Talod (at Annexure "E" to the memo of the petition) deserves to be quashed and set aside. It is also submitted by the learned advocate for the petitioner that during pendency of the present petition, a notice has been issued by the Deputy Collector, Stamp duty, Sabarkantha on 17th January, 2006 under section 39(1)(B) of the Act of 1958 for an amount of Rs. 24,750/-. It is also submitted by the learned advocate for the petitioner as per the notice dated 17.1.2006 issued by the Deputy Collector, Stamp Duty, which is at page no. 62 of the petition, the issue is yet to be adjudicated upon by the Deputy Collector, Stamp Duty, Sabarkantha. Thus, so long as the notice under the Act of 1958 is pending, the impugned notice dated 26th December, 2005, given by the Mamlatdar, Talod for payment of Rs. 8,10,000/- towards stamp duty deserves to be quashed and set aside.

3. I have also heard the learned Assistant Government Pleader Mr. Gori on behalf of respondent no.1, who has submitted that the notice dated 26th

December, 2005 issued by the Mamlatdar, Talod is on the basis of the audit report given by the auditor. The petitioner has not paid the correct stamp duty for the registration of the document. In pursuance of the audit report, the notice has been issued under section 152 of the Bombay Land Revenue Code, 1879 and therefore, the petition may not be entertained by this Court.

4. The learned counsel for respondent no. 2 referred affidavit-in-reply and pointed out that respondent no. 2 has all power, jurisdiction and authority to point out the additional amount to be paid upon the loan transaction entered into between the petitioner and Mahesana Urban Co.Op. Bank Ltd. The non-levy of stamp duty due to non-execution of necessary documentation was brought to the notice of respondent no.1.

5. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my view, the order dated 12.8.2004 (Annexure "D") and the notice dated 26th December, 2005 (Annexure "E") by the Mamlatdar, Talod under section 152 of the Code of 1879, whereby the petitioner has been directed

to make payment of Rs. 8,10,000/- towards stamp duty for registration of the document, deserve to be quashed and set aside mainly for the following facts and reasons.

(i) The impugned notice at Annexures "D" as well as "E" have been issued without following due procedure established by law, especially, what is envisaged under Bombay Stamp Act, 1958.

(ii) Opportunity of being heard has not been provided, before passing the order at Annexure "D" dated 12.8.2004, whereby straight away liability is imposed.

(iii) What is notice by the Accountant General in their audit report paragraph for the years 2002-2003 and what has been the basis for issuance of the impugned communication, have never been supplied to the petitioner. Thus, the very basis of this communication is not supplied to the petitioner.

(iv) Looking to the facts and circumstances of the case, it seems that the remarks of the Accountant General, in his audit report may be the basis for issuance of proper notice under the Act of 1958, but without issuance of any

notice under Bombay Stamp Act, 1958, action initiated by the Mamlatdar deserves to be quashed and set aside.

(v) The Accountant General's audit remarks are not the conclusive evidence. At the most, it is one of the basis. This basis ought to have been supplied to the petitioner and adequate opportunity of being heard ought to have been given to the petitioner prior to any final conclusion as to payment of additional/deficit stamp duty. Thousand possibilities cannot be equated with one truth. Audit report is a probability or possibility of liability of petitioner, but before finalisation of liability, the notice of hearing contemplated by the Bombay Stamps Act ought to have been given. Audit report which was never supplied to the petitioner can, never, oust the statutory requirement of issuance of notice and hearing of the party. Audit report is not an exception of principles of natural justice. Audit report is nothing but a suggestion by an accurate eye, to the concerned respondent authority that duty is not levied or assessed, but that

does not mean that the concerned authority can straight away pass an order of levy of duty or can straight away pass an order of assessment. It appears from the facts of the case that subsequently, notice has been issued dated 17th January, 2006 by the Deputy Collector, Stamp duty, Sabarkantha (page no.62 of the memo of the petition) for payment of deficit stamp duty of Rs. 24,750/- only. Thus, there is a vast difference between the figure of Rs. 8,10,000/- for which a communication has been issued by the Mamlatdar, Talod (Annexures "D" as well as "E" to the memo of the petition) and the notice issued under the Stamp Act, 1958 for the payment of Rs. 24,750/- with penalty. This notice is yet to be adjudicated upon. Thus, the liability of the petitioner under the Act of 1958 is yet to be crystalised and therefore, the conclusion arrived at by the Mamlatdar, Talod vide communication dated 12.8.2004 and dated 26th December, 2005 (Annexures "D" and "E") for the payment of Rs. 8,10,000/- towards stamp duty are not only premature, but is also violative of the

provisions of the law, especially Bombay Stamp Act, 1958 and of principles of natural justice.

6. As a cumulative effect of the aforesaid facts and reasons and the provisions of the Stamp Act, 1958, the impugned communication dated 26th December, 2005 issued by the Mamlatdar, Talod is hereby quashed and set aside. Nonetheless, the respondent no.1 is free to initiate legal action after following due procedure under the existing law applicable to the petitioner and after giving adequate opportunity of being heard to the petitioner provided under the law. Rule made absolute accordingly with no order as to costs.

(D.N.Patel, J)

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